

PATENT
ATTORNEY DOCKET NO. 50216/003004Certificate of Mailing: Date of Deposit: November 25, 2002

I hereby certify under 37 C.F.R. § 1.8(a) that this correspondence is being deposited with the United States Postal Service as **first class mail** with sufficient postage on the date indicated above and is addressed to the Commissioner for Patents, Washington, D.C. 20231.

Roselynn D. Scarfo

Printed name of person mailing correspondence

Roselynn D. Scarfo

Signature of person mailing correspondence

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Gerald Krystal et al. Art Unit: 1653
Serial No.: 09/919,703 Examiner: Liu, S.
Filed: July 31, 2001 Customer No.: 21559
Title: PEPTIDES AND THEIR USE TO AMELIORATE CELL DEATH

Commissioner for Patents
Washington, D.C. 20231

REPLY TO RESTRICTION REQUIREMENT

In reply to the Restriction Requirement that was mailed in connection with the above-captioned case on September 26, 2002, applicants elect the invention of Group I, claims 1-20, without traverse.

The Examiner further required applicants to elect (i) a single polypeptide from among SEQ ID NOs: 1-8, and (ii) a single disease from among those listed in claim 18. In response, applicants elect (i) SVDVEY (SEQ ID NO: 1), and (ii) cardiovascular disease, respectively. These elections are made with traverse.

Regarding the requirement that applicants elect a single polypeptide, applicants note that the present application contains no species claims only generic claims. As stated in the MPEP, at § 809.02(d), "where only generic claims are presented, no restriction can be required except in those applications where the generic claims recite such a multiplicity of species that an unduly extensive and burdensome search is necessary." Applicants submit that examination of the present claims would not constitute an undue burden. Applicants further refer to MPEP § 803.02, which states that

RECEIVED
DEC 04 2002

TECH CENTER 1600/2900

01/08/2003 KIP/MIN 00000003 09/19/02 01 FC:2552

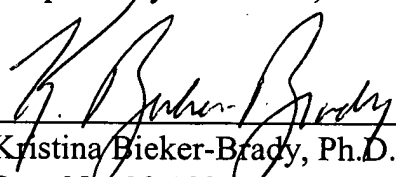
"if the members of the Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the Examiner must examine all the members of the Markush group in the claim on the merits, even though they are directed to independent and distinct inventions." In the present application, claims 2, 3, 16, and 17 are Markush-type claims in which the peptides are few in number (eight sequences) and closely related by sequence and function (each contains a VDV peptide and inhibits apoptosis). In view of the foregoing, applicants respectfully request that the requirement that applicants elect a single polypeptide be withdrawn.

Turning now to the requirement that applicants elect a single disease from among those listed in claim 18, applicants again request reconsideration. Applicants submit that the invention is directed to a method of preventing cell death. Accordingly, cell death is the common pathological characteristic shared among the diseases listed in claim 18, and the requirement that applicants elect one disease is improper and should be withdrawn. Moreover, applicants note the presence of linking claims 14 and 18, which do not recite any single disease. Should the Examiner maintain this basis of the restriction requirement, applicants request acknowledgement that these claims will be examined pursuant to the rules outlined for linking claims in MPEP § 809.03.

If there are any charges or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

Date: November 16, 2002



Kristina Bieker-Brady, Ph.D.
Reg. No. 39,109

Clark & Elbing LLP
101 Federal Street
Boston, MA 02110
Telephone: 617-428-0200
Facsimile: 617-428-7045



21559

PATENT TRADEMARK OFFICE